

108TH CONGRESS
1ST SESSION

S. 1637

To amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 18, 2003

Mr. FRIST (for Mr. GRASSLEY) (for himself, Mr. BAUCUS, and Mr. HATCH) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE; AMENDMENT OF 1986 CODE;**
 2 **TABLE OF CONTENTS.**

3 (a) **SHORT TITLE.**—This Act may be cited as the
 4 “Jumpstart Our Business Strength (JOBS) Act”.

5 (b) **AMENDMENT OF 1986 CODE.**—Except as other-
 6 wise expressly provided, whenever in this Act an amend-
 7 ment or repeal is expressed in terms of an amendment
 8 to, or repeal of, a section or other provision, the reference
 9 shall be considered to be made to a section or other provi-
 10 sion of the Internal Revenue Code of 1986.

11 (c) **TABLE OF CONTENTS.**—

Sec. 1. Short title; amendment of 1986 Code; table of contents.

**TITLE I—PROVISIONS RELATING TO REPEAL OF EXCLUSION FOR
 EXTRATERRITORIAL INCOME**

Sec. 101. Repeal of exclusion for extraterritorial income.

Sec. 102. Deduction relating to income attributable to United States production activities.

TITLE II—INTERNATIONAL TAX PROVISIONS

Subtitle A—International Tax Reform

Sec. 201. 20-year foreign tax credit carryforward.

Sec. 202. Look-thru rules to apply to dividends from noncontrolled section 902 corporations.

Sec. 203. Foreign tax credit under alternative minimum tax.

Sec. 204. Recharacterization of overall domestic loss.

Sec. 205. Interest expense allocation rules.

Sec. 206. Determination of foreign personal holding company income with respect to transactions in commodities.

Subtitle B—International Tax Simplification

Sec. 211. Repeal of foreign personal holding company rules and foreign investment company rules.

Sec. 212. Expansion of de minimis rule under subpart F.

Sec. 213. Attribution of stock ownership through partnerships to apply in determining section 902 and 960 credits.

Sec. 214. Application of uniform capitalization rules to foreign persons.

Sec. 215. Repeal of withholding tax on dividends from certain foreign corporations.

Sec. 216. Repeal of special capital gains tax on aliens present in the United States for 183 days or more.

1 **TITLE I—PROVISIONS RELATING**
 2 **TO REPEAL OF EXCLUSION**
 3 **FOR EXTRATERRITORIAL IN-**
 4 **COME**

5 **SEC. 101. REPEAL OF EXCLUSION FOR EXTRATERRITORIAL**
 6 **INCOME.**

7 (a) IN GENERAL.—Section 114 is hereby repealed.

8 (b) CONFORMING AMENDMENTS.—

9 (1)(A) Subpart E of part III of subchapter N
 10 of chapter 1 (relating to qualifying foreign trade in-
 11 come) is hereby repealed.

12 (B) The table of subparts for such part III is
 13 amended by striking the item relating to subpart E.

14 (2) The table of sections for part III of sub-
 15 chapter B of chapter 1 is amended by striking the
 16 item relating to section 114.

17 (3) The second sentence of section
 18 56(g)(4)(B)(i) is amended by striking “or under sec-
 19 tion 114”.

20 (4) Section 275(a) is amended—

21 (A) by inserting “or” at the end of para-
 22 graph (4)(A), by striking “or” at the end of
 23 paragraph (4)(B) and inserting a period, and
 24 by striking subparagraph (C), and

1 (B) by striking the last sentence.

2 (5) Paragraph (3) of section 864(e) is amend-
3 ed—

4 (A) by striking:

5 “(3) TAX-EXEMPT ASSETS NOT TAKEN INTO
6 ACCOUNT.—

7 “(A) IN GENERAL.—For purposes of”; and
8 inserting:

9 “(3) TAX-EXEMPT ASSETS NOT TAKEN INTO
10 ACCOUNT.—For purposes of”, and

11 (B) by striking subparagraph (B).

12 (6) Section 903 is amended by striking “114,
13 164(a),” and inserting “164(a)”.

14 (7) Section 999(e)(1) is amended by striking
15 “941(a)(5),”.

16 (c) EFFECTIVE DATE.—

17 (1) IN GENERAL.—The amendments made by
18 this section shall apply to transactions occurring
19 after the date of the enactment of this Act.

20 (2) BINDING CONTRACTS.—The amendments
21 made by this section shall not apply to any trans-
22 action in the ordinary course of a trade or business
23 which occurs pursuant to a binding contract—

24 (A) which is between the taxpayer and a
25 person who is not a related person (as defined

1 in section 943(b)(3) of such Code, as in effect
2 on the day before the date of the enactment of
3 this Act), and

4 (B) which is in effect on September 17,
5 2003, and at all times thereafter.

6 (d) REVOCATION OF SECTION 943(e) ELECTIONS.—

7 (1) IN GENERAL.—In the case of a corporation
8 that elected to be treated as a domestic corporation
9 under section 943(e) of the Internal Revenue Code
10 of 1986 (as in effect on the day before the date of
11 the enactment of this Act)—

12 (A) the corporation may, during the 1-year
13 period beginning on the date of the enactment
14 of this Act, revoke such election, effective as of
15 such date of enactment, and

16 (B) if the corporation does revoke such
17 election—

18 (i) such corporation shall be treated
19 as a domestic corporation transferring (as
20 of such date of enactment) all of its prop-
21 erty to a foreign corporation in connection
22 with an exchange described in section 354
23 of such Code, and

24 (ii) no gain or loss shall be recognized
25 on such transfer.

1 (2) EXCEPTION.—Subparagraph (B)(ii) of
2 paragraph (1) shall not apply to gain on any asset
3 held by the revoking corporation if—

4 (A) the basis of such asset is determined
5 in whole or in part by reference to the basis of
6 such asset in the hands of the person from
7 whom the revoking corporation acquired such
8 asset,

9 (B) the asset was acquired by transfer (not
10 as a result of the election under section 943(e)
11 of such Code) occurring on or after the 1st day
12 on which its election under section 943(e) of
13 such Code was effective, and

14 (C) a principal purpose of the acquisition
15 was the reduction or avoidance of tax (other
16 than a reduction in tax under section 114 of
17 such Code, as in effect on the day before the
18 date of the enactment of this Act).

19 (e) GENERAL TRANSITION.—

20 (1) IN GENERAL.—In the case of a taxable year
21 ending after the date of the enactment of this Act
22 and beginning before January 1, 2007, for purposes
23 of chapter 1 of such Code, a current FSC/ETI bene-
24 ficiary shall be allowed a deduction equal to the

1 transition amount determined under this subsection
2 with respect to such beneficiary for such year.

3 (2) CURRENT FSC/ETI BENEFICIARY.—The
4 term “current FSC/ETI beneficiary” means any cor-
5 poration which entered into one or more transactions
6 during its taxable year beginning in calendar year
7 2002 with respect to which FSC/ETI benefits were
8 allowable.

9 (3) TRANSITION AMOUNT.—For purposes of
10 this subsection—

11 (A) IN GENERAL.—The transition amount
12 applicable to any current FSC/ETI beneficiary
13 for any taxable year is the phaseout percentage
14 of the base period amount.

15 (B) PHASEOUT PERCENTAGE.—

16 (i) IN GENERAL.—In the case of a
17 taxpayer using the calendar year as its
18 taxable year, the phaseout percentage shall
19 be determined under the following table:

Years:	The phaseout percentage is:
2004	80
2005	80
2006	60.

20 (ii) SPECIAL RULE FOR 2003.—The
21 phaseout percentage for 2003 shall be the
22 amount that bears the same ratio to 100
23 percent as the number of days after the

1 date of the enactment of this Act bears to
2 365.

3 (iii) SPECIAL RULE FOR FISCAL YEAR
4 TAXPAYERS.—In the case of a taxpayer
5 not using the calendar year as its taxable
6 year, the phaseout percentage is the
7 weighted average of the phaseout percent-
8 ages determined under the preceding provi-
9 sions of this paragraph with respect to cal-
10 endar years any portion of which is in-
11 cluded in the taxpayer’s taxable year. The
12 weighted average shall be determined on
13 the basis of the respective portions of the
14 taxable year in each calendar year.

15 (4) BASE PERIOD AMOUNT.—For purposes of
16 this subsection, the base period amount is the aggre-
17 gate FSC/ETI benefits for the taxpayer’s taxable
18 year beginning in calendar year 2002.

19 (5) FSC/ETI BENEFIT.—For purposes of this
20 subsection, the term “FSC/ETI benefit” means—

21 (A) amounts excludable from gross income
22 under section 114 of such Code, and

23 (B) the exempt foreign trade income of re-
24 lated foreign sales corporations from property
25 acquired from the taxpayer (determined without

1 regard to section 923(a)(5) of such Code (relat-
2 ing to special rule for military property), as in
3 effect on the day before the date of the enact-
4 ment of the FSC Repeal and Extraterritorial
5 Income Exclusion Act of 2000).

6 In determining the FSC/ETI benefit there shall be
7 excluded any amount attributable to a transaction
8 with respect to which the taxpayer is the lessor un-
9 less the leased property was manufactured or pro-
10 duced in whole or in part by the taxpayer.

11 (6) SPECIAL RULE FOR FARM COOPERATIVES.—
12 Determinations under this subsection with respect to
13 an organization described in section 943(g)(1) of
14 such Code, as in effect on the day before the date
15 of the enactment of this Act, shall be made at the
16 cooperative level and the purposes of this subsection
17 shall be carried out in a manner similar to section
18 250(h) of such Code, as added by this Act. Such de-
19 terminations shall be in accordance with such re-
20 quirements and procedures as the Secretary may
21 prescribe.

22 (7) CERTAIN RULES TO APPLY.—Rules similar
23 to the rules of section 41(f) of such Code shall apply
24 for purposes of this subsection.

1 (8) COORDINATION WITH BINDING CONTRACT
2 RULE.—The deduction determined under paragraph
3 (1) for any taxable year shall be reduced by the
4 phaseout percentage of any FSC/ETI benefit real-
5 ized for the taxable year by reason of subsection
6 (c)(2), except that for purposes of this paragraph
7 the phaseout percentage for 2003 shall be treated as
8 being equal to 100 percent.

9 (9) SPECIAL RULE FOR TAXABLE YEAR WHICH
10 INCLUDES DATE OF ENACTMENT.—In the case of a
11 taxable year which includes the date of the enact-
12 ment of this Act, the deduction allowed under this
13 subsection to any current FSC/ETI beneficiary shall
14 in no event exceed—

15 (A) 100 percent of such beneficiary's base
16 period amount for calendar year 2003, reduced
17 by

18 (B) the aggregate FSC/ETI benefits of
19 such beneficiary with respect to transactions oc-
20 curring during the portion of the taxable year
21 ending on the date of the enactment of this Act.

1 **SEC. 102. DEDUCTION RELATING TO INCOME ATTRIB-**
 2 **UTABLE TO UNITED STATES PRODUCTION**
 3 **ACTIVITIES.**

4 (a) IN GENERAL.—Part VIII of subchapter B of
 5 chapter 1 (relating to special deductions for corporations)
 6 is amended by adding at the end the following new section:

7 **“SEC. 250. INCOME ATTRIBUTABLE TO DOMESTIC PRODUC-**
 8 **TION ACTIVITIES.**

9 “(a) IN GENERAL.—In the case of a corporation,
 10 there shall be allowed as a deduction an amount equal to
 11 9 percent of the qualified production activities income of
 12 the corporation for the taxable year.

13 “(b) PHASEIN.—In the case of taxable years begin-
 14 ning in 2004, 2005, 2006, 2007, or 2008, subsection (a)
 15 shall be applied by substituting for the percentage con-
 16 tained therein the transition percentage determined under
 17 the following table:

“Taxable years beginning in:	The transition percentage is:
2004	1
2005	2
2006	3
2007 or 2008	6.

18 “(c) QUALIFIED PRODUCTION ACTIVITIES IN-
 19 COME.—For purposes of this section—

20 “(1) IN GENERAL.—The term ‘qualified produc-
 21 tion activities income’ means an amount equal to the
 22 applicable percentage of the portion of the modified

1 taxable income of the taxpayer which is attributable
2 to domestic production activities.

3 “(2) APPLICABLE PERCENTAGE.—For purposes
4 of this subsection, the term ‘applicable percentage’
5 means—

6 “(A) in the case of taxable years beginning
7 before 2012, a percentage equal to the domes-
8 tic/worldwide fraction,

9 “(B) in the case of taxable years beginning
10 in 2012, a percentage (not greater than 100
11 percent) equal to twice the domestic/worldwide
12 fraction, and

13 “(C) in the case of taxable years beginning
14 after 2012, 100 percent.

15 “(d) DETERMINATION OF INCOME ATTRIBUTABLE
16 TO DOMESTIC PRODUCTION ACTIVITIES.—For purposes
17 of this section—

18 “(1) IN GENERAL.—The portion of the modified
19 taxable income which is attributable to domestic pro-
20 duction activities is so much of the modified taxable
21 income for the taxable year as does not exceed—

22 “(A) the taxpayer’s domestic production
23 gross receipts for such taxable year, reduced by

24 “(B) the sum of—

1 “(i) the costs of goods sold that are
2 allocable to such receipts,

3 “(ii) other deductions, expenses, or
4 losses directly allocable to such receipts,
5 and

6 “(iii) a proper share of other deduc-
7 tions, expenses, and losses that are not di-
8 rectly allocable to such receipts or another
9 class of income.

10 “(2) ALLOCATION METHOD.—The Secretary
11 shall prescribe rules for the proper allocation of
12 items of income, deduction, expense, and loss for
13 purposes of determining income attributable to do-
14 mestic production activities.

15 “(3) SPECIAL RULES FOR DETERMINING
16 COSTS.—

17 “(A) IN GENERAL.—For purposes of deter-
18 mining costs under clause (i) of paragraph
19 (1)(B), any item or service brought into the
20 United States without a transfer price meeting
21 the requirements of section 482 shall be treated
22 as acquired by purchase, and its cost shall be
23 treated as not less than its value when it en-
24 tered the United States. A similar rule shall
25 apply in determining the adjusted basis of

1 leased or rented property where the lease or
2 rental gives rise to domestic production gross
3 receipts.

4 “(B) EXPORTS FOR FURTHER MANUFAC-
5 TURE.—In the case of any property described
6 in subparagraph (A) that had been exported by
7 the taxpayer for further manufacture, the in-
8 crease in cost or adjusted basis under subpara-
9 graph (A) shall not exceed the difference be-
10 tween the value of the property when exported
11 and the value of the property when brought
12 back into the United States after the further
13 manufacture.

14 “(4) MODIFIED TAXABLE INCOME.—The term
15 ‘modified taxable income’ means taxable income
16 computed without regard to the deduction allowable
17 under this section.

18 “(e) DOMESTIC PRODUCTION GROSS RECEIPTS.—
19 For purposes of this section, the term ‘domestic produc-
20 tion gross receipts’ means the gross receipts of the tax-
21 payer which are derived from—

22 “(1) any sale, exchange, or other disposition of,

23 or

24 “(2) any lease, rental, or license of,

1 qualifying production property which was manufactured,
2 produced, grown, or extracted in whole or in significant
3 part by the taxpayer within the United States.

4 “(f) QUALIFYING PRODUCTION PROPERTY.—For
5 purposes of this section—

6 “(1) IN GENERAL.—Except as otherwise pro-
7 vided in this paragraph, the term ‘qualifying produc-
8 tion property’ means—

9 “(A) any tangible personal property,

10 “(B) any computer software, and

11 “(C) any property described in section
12 168(f) (3) or (4).

13 “(2) EXCLUSIONS FROM QUALIFYING PRODUC-
14 TION PROPERTY.—The term ‘qualifying production
15 property’ shall not include—

16 “(A) consumable property that is sold,
17 leased, or licensed by the taxpayer as an inte-
18 gral part of the provision of services,

19 “(B) oil or gas (or any primary product
20 thereof),

21 “(C) electricity,

22 “(D) water supplied by pipeline to the con-
23 sumer,

24 “(E) any unprocessed timber which is
25 softwood,

1 “(F) utility services, or

2 “(G) any property (not described in para-
3 graph (1)(B)) which is a film, tape, recording,
4 book, magazine, newspaper, or similar property
5 the market for which is primarily topical or oth-
6 erwise essentially transitory in nature.

7 For purposes of subparagraph (E), the term ‘un-
8 processed timber’ means any log, cant, or similar
9 form of timber.

10 “(g) DOMESTIC/WORLDWIDE FRACTION.—For pur-
11 poses of this section—

12 “(1) IN GENERAL.—The term ‘domestic/world-
13 wide fraction’ means a fraction—

14 “(A) the numerator of which is the value
15 of the domestic production of the taxpayer, and

16 “(B) the denominator of which is the value
17 of the worldwide production of the taxpayer.

18 “(2) VALUE OF DOMESTIC PRODUCTION.—The
19 value of domestic production is the excess of—

20 “(A) the domestic production gross re-
21 ceipts, over

22 “(B) the cost of purchased inputs allocable
23 to such receipts that are deductible under this
24 chapter for the taxable year.

25 “(3) PURCHASED INPUTS.—

1 “(A) IN GENERAL.—Purchased inputs are
2 any of the following items acquired by pur-
3 chase:

4 “(i) Services (other than services of
5 employees) used in manufacture, produc-
6 tion, growth, or extraction activities.

7 “(ii) Items consumed in connection
8 with such activities.

9 “(iii) Items incorporated as part of
10 the property being manufactured, pro-
11 duced, grown, or extracted.

12 “(B) SPECIAL RULE.—Rules similar to the
13 rules of subsection (d)(3) shall apply for pur-
14 poses of this subsection.

15 “(4) VALUE OF WORLDWIDE PRODUCTION.—

16 “(A) IN GENERAL.—The value of world-
17 wide production shall be determined under the
18 principles of paragraph (2), except that—

19 “(i) worldwide production gross re-
20 ceipts shall be taken into account, and

21 “(ii) paragraph (3)(B) shall not apply.

22 “(B) WORLDWIDE PRODUCTION GROSS RE-
23 CEIPTS.—The worldwide production gross re-
24 ceipts is the amount that would be determined
25 under subsection (e) if such subsection were ap-

1 plied without any reference to the United
2 States.

3 “(5) SPECIAL RULE FOR AFFILIATED
4 GROUPS.—

5 “(A) IN GENERAL.—In the case of a tax-
6 payer that is a member of an expanded affili-
7 ated group, the domestic/worldwide fraction
8 shall be the amount determined under the pre-
9 ceding provisions of this subsection by treating
10 all members of such group as a single corpora-
11 tion.

12 “(B) EXPANDED AFFILIATED GROUP.—
13 The term ‘expanded affiliated group’ means an
14 affiliated group as defined in section 1504(a),
15 determined—

16 “(i) by substituting ‘50 percent’ for
17 ‘80 percent’ each place it appears, and

18 “(ii) without regard to paragraphs
19 (2), (3), (4), and (8) of section 1504(b).

20 “(h) DEFINITIONS AND SPECIAL RULES.—

21 “(1) EXCLUSION FOR PATRONS OF AGRICUL-
22 TURAL AND HORTICULTURAL COOPERATIVES.—

23 “(A) IN GENERAL.—If any amount de-
24 scribed in paragraph (1) or (3) of section 1385
25 (a)—

1 “(i) is received by a person from an
2 organization to which part I of subchapter
3 T applies which is engaged in the mar-
4 keting of agricultural or horticultural prod-
5 ucts, and

6 “(ii) is allocable to the portion of the
7 qualified production activities income of
8 the organization which is deductible under
9 subsection (a) (determined as if the organi-
10 zation were a corporation if it is not) and
11 designated as such by the organization in
12 a written notice mailed to its patrons dur-
13 ing the payment period described in section
14 1382(a),

15 then such person shall be allowed an exclusion
16 from gross income with respect to such amount.
17 The taxable income of the organization shall
18 not be reduced under section 1382 by the por-
19 tion of any such amount with respect to which
20 an exclusion is allowable to a person by reason
21 of this paragraph.

22 “(B) SPECIAL RULES.—For purposes of
23 applying subparagraph (A), in determining the
24 qualified production activities income of the or-
25 ganization under this section—

1 “(i) there shall not be taken into ac-
2 count in computing the organization’s
3 modified taxable income any deduction al-
4 lowable under subsection (b) or (c) of sec-
5 tion 1382 (relating to patronage dividends,
6 per-unit retain allocations, and nonpatron-
7 age distributions), and

8 “(ii) the organization shall be treated
9 as having manufactured, produced, grown,
10 or extracted in whole or significant part
11 any qualifying production property mar-
12 keted by the organization which its patrons
13 have so manufactured, produced, grown, or
14 extracted.

15 “(2) SPECIAL RULE FOR PARTNERSHIPS.—For
16 purposes of this section, a corporation’s distributive
17 share of any partnership item shall be taken into ac-
18 count as if directly realized by the corporation.

19 “(3) COORDINATION WITH MINIMUM TAX.—The
20 deduction under this section shall be allowed for
21 purposes of the tax imposed by section 55; except
22 that for purposes of section 55, alternative minimum
23 taxable income shall be taken into account in deter-
24 mining the deduction under this section.

1 “(4) ORDERING RULE.—The amount of any
2 other deduction allowable under this chapter shall be
3 determined as if this section had not been enacted.

4 “(5) COORDINATION WITH TRANSITION
5 RULES.—For purposes of this section—

6 “(A) domestic production gross receipts
7 shall not include gross receipts from any trans-
8 action if the binding contract transition relief of
9 section 101(e)(2) of the Jumpstart Our Busi-
10 ness Strength (JOBS) Act applies to such
11 transaction, and

12 “(B) any deduction allowed under section
13 101(e) of such Act shall be disregarded in de-
14 termining the portion of the taxable income
15 which is attributable to domestic production
16 gross receipts.”.

17 (b) DEDUCTION ALLOWED TO SHAREHOLDERS OF S
18 CORPORATIONS.—

19 (1) IN GENERAL.—Section 1363(b) (relating to
20 computation of S corporation’s taxable income) is
21 amended by striking “and” at the end of paragraph
22 (3), by striking the period at the end of paragraph
23 (4) and inserting “, and”, and by adding at the end
24 the following new paragraph:

1 “(5) the deduction under section 250 shall be
2 allowed to the S corporation.”

3 (2) INCREASE IN BASIS.—Section 1367(a)(1)
4 (relating to increases in basis) is amended by strik-
5 ing “and” at the end of subparagraph (B), by strik-
6 ing the period at the end of subparagraph (C) and
7 inserting “, and”, and by adding at the end the fol-
8 lowing new subparagraph:

9 “(D) any deduction allowed under section
10 250.”

11 (c) MINIMUM TAX.—Section 56(g)(4)(C) (relating to
12 disallowance of items not deductible in computing earnings
13 and profits) is amended by adding at the end the following
14 new clause:

15 “(v) DEDUCTION FOR DOMESTIC PRO-
16 DUCTION.—Clause (i) shall not apply to
17 any amount allowable as a deduction under
18 section 250.”

19 (d) CLERICAL AMENDMENT.—The table of sections
20 for part VIII of subchapter B of chapter 1 is amended
21 by adding at the end the following new item:

 “Sec. 250. Income attributable to domestic production activi-
 ties.”

22 (e) EFFECTIVE DATE.—

1 **SEC. 202. LOOK-THRU RULES TO APPLY TO DIVIDENDS**
2 **FROM NONCONTROLLED SECTION 902 COR-**
3 **PORATIONS.**

4 (a) IN GENERAL.—Section 904(d)(4) (relating to
5 look-thru rules apply to dividends from noncontrolled sec-
6 tion 902 corporations) is amended to read as follows:

7 “(4) LOOK-THRU APPLIES TO DIVIDENDS FROM
8 NONCONTROLLED SECTION 902 CORPORATIONS.—

9 “(A) IN GENERAL.—For purposes of this
10 subsection, any dividend from a noncontrolled
11 section 902 corporation with respect to the tax-
12 payer shall be treated as income described in a
13 subparagraph of paragraph (1) in proportion to
14 the ratio of—

15 “(i) the portion of earnings and prof-
16 its attributable to income described in such
17 subparagraph, to

18 “(ii) the total amount of earnings and
19 profits.

20 “(B) SPECIAL RULES.—For purposes of
21 this paragraph—

22 “(i) EARNINGS AND PROFITS.—

23 “(I) IN GENERAL.—The rules of
24 section 316 shall apply.

25 “(II) REGULATIONS.—The Sec-
26 retary may prescribe regulations re-

1 regarding the treatment of distributions
2 out of earnings and profits for periods
3 before the taxpayer's acquisition of
4 the stock to which the distributions
5 relate.

6 “(ii) INADEQUATE SUBSTAN-
7 TIATION.—If the Secretary determines that
8 the proper subparagraph of paragraph (1)
9 in which a dividend is described has not
10 been substantiated, such dividend shall be
11 treated as income described in paragraph
12 (1)(A).

13 “(iii) LOOK-THRU WITH RESPECT TO
14 CARRYFORWARDS OF CREDIT.—Rules simi-
15 lar to subparagraph (A) also shall apply to
16 any carryforward under subsection (c)
17 from a taxable year beginning before Janu-
18 ary 1, 2003, of tax allocable to a dividend
19 from a noncontrolled section 902 corpora-
20 tion with respect to the taxpayer. The Sec-
21 retary may by regulations provide for the
22 allocation of any carryback of tax allocable
23 to a dividend from a noncontrolled section
24 902 corporation to such a taxable year for
25 purposes of allocating such dividend among

1 the separate categories in effect for such
2 taxable year.

3 “(iv) COORDINATION WITH HIGH-
4 TAXED INCOME PROVISIONS.—Rules simi-
5 lar to the rules of paragraph (3)(F) shall
6 apply for purposes of this paragraph.”.

7 (b) CONFORMING AMENDMENTS.—

8 (1) Section 904(d)(2)(E) is amended—

9 (A) by inserting “or (4)” after “paragraph
10 (3)” in clause (i), and

11 (B) by striking clauses (ii) and (iv) and by
12 redesignating clause (iii) as clause (ii).

13 (2) Clause (i) of section 864(d)(5)(A) is amend-
14 ed to read as follows:

15 “(i) Subclause (I) of section
16 904(d)(2)(B)(iii).”

17 (c) EFFECTIVE DATE.—The amendments made by
18 this section shall apply to taxable years beginning after
19 December 31, 2002.

20 **SEC. 203. FOREIGN TAX CREDIT UNDER ALTERNATIVE MIN-**
21 **IMUM TAX.**

22 (a) IN GENERAL.—

23 (1) Subsection (a) of section 59 is amended by
24 striking paragraph (2) and by redesignating para-

1 graphs (3) and (4) as paragraphs (2) and (3), re-
2 spectively.

3 (2) Section 53(d)(1)(B)(i)(II) of such Code is
4 amended by striking “and if section 59(a)(2) did not
5 apply”.

6 (b) EFFECTIVE DATE.—The amendments made by
7 this section shall apply to taxable years beginning after
8 December 31, 2004.

9 **SEC. 204. RECHARACTERIZATION OF OVERALL DOMESTIC**
10 **LOSS.**

11 (a) GENERAL RULE.—Section 904 is amended by re-
12 designating subsections (g), (h), (i), (j), and (k) as sub-
13 sections (h), (i), (j), (k), and (l) respectively, and by in-
14 serting after subsection (f) the following new subsection:

15 “(g) RECHARACTERIZATION OF OVERALL DOMESTIC
16 LOSS.—

17 “(1) GENERAL RULE.—For purposes of this
18 subpart and section 936, in the case of any taxpayer
19 who sustains an overall domestic loss for any taxable
20 year beginning after December 31, 2006, that por-
21 tion of the taxpayer’s taxable income from sources
22 within the United States for each succeeding taxable
23 year which is equal to the lesser of—

1 “(A) the amount of such loss (to the extent
2 not used under this paragraph in prior taxable
3 years), or

4 “(B) 50 percent of the taxpayer’s taxable
5 income from sources within the United States
6 for such succeeding taxable year,

7 shall be treated as income from sources without the
8 United States (and not as income from sources with-
9 in the United States).

10 “(2) OVERALL DOMESTIC LOSS DEFINED.—For
11 purposes of this subsection—

12 “(A) IN GENERAL.—The term ‘overall do-
13 mestic loss’ means any domestic loss to the ex-
14 tent such loss offsets taxable income from
15 sources without the United States for the tax-
16 able year or for any preceding taxable year by
17 reason of a carryback. For purposes of the pre-
18 ceding sentence, the term ‘domestic loss’ means
19 the amount by which the gross income for the
20 taxable year from sources within the United
21 States is exceeded by the sum of the deductions
22 properly apportioned or allocated thereto (deter-
23 mined without regard to any carryback from a
24 subsequent taxable year).

1 “(B) TAXPAYER MUST HAVE ELECTED
2 FOREIGN TAX CREDIT FOR YEAR OF LOSS.—
3 The term ‘overall domestic loss’ shall not in-
4 clude any loss for any taxable year unless the
5 taxpayer chose the benefits of this subpart for
6 such taxable year.

7 “(3) CHARACTERIZATION OF SUBSEQUENT IN-
8 COME.—

9 “(A) IN GENERAL.—Any income from
10 sources within the United States that is treated
11 as income from sources without the United
12 States under paragraph (1) shall be allocated
13 among and increase the income categories in
14 proportion to the loss from sources within the
15 United States previously allocated to those in-
16 come categories.

17 “(B) INCOME CATEGORY.—For purposes of
18 this paragraph, the term ‘income category’ has
19 the meaning given such term by subsection
20 (f)(5)(E)(i).

21 “(4) COORDINATION WITH SUBSECTION (f).—
22 The Secretary shall prescribe such regulations as
23 may be necessary to coordinate the provisions of this
24 subsection with the provisions of subsection (f).”

25 (b) CONFORMING AMENDMENTS.—

1 (1) Section 535(d)(2) is amended by striking
2 “section 904(g)(6)” and inserting “section
3 904(h)(6)”.

4 (2) Subparagraph (A) of section 936(a)(2) is
5 amended by striking “section 904(f)” and inserting
6 “subsections (f) and (g) of section 904”.

7 (c) EFFECTIVE DATE.—The amendments made by
8 this section shall apply to losses for taxable years begin-
9 ning after December 31, 2006.

10 **SEC. 205. INTEREST EXPENSE ALLOCATION RULES.**

11 (a) ELECTION TO ALLOCATE ON WORLDWIDE
12 BASIS.— Section 864 is amended by redesignating sub-
13 section (f) as subsection (g) and by inserting after sub-
14 section (e) the following new subsection:

15 “(f) ELECTION TO ALLOCATE INTEREST, ETC. ON
16 WORLDWIDE BASIS.—For purposes of this subchapter, at
17 the election of the worldwide affiliated group—

18 “(1) ALLOCATION AND APPORTIONMENT OF IN-
19 TEREST EXPENSE.—

20 “(A) IN GENERAL.—The taxable income of
21 each domestic corporation which is a member of
22 a worldwide affiliated group shall be determined
23 by allocating and apportioning interest expense
24 of each member as if all members of such group
25 were a single corporation.

1 “(B) TREATMENT OF WORLDWIDE AFFILI-
2 ATED GROUP.—The taxable income of the do-
3 mestic members of a worldwide affiliated group
4 from sources outside the United States shall be
5 determined by allocating and apportioning the
6 interest expense of such domestic members to
7 such income in an amount equal to the excess
8 (if any) of—

9 “(i) the total interest expense of the
10 worldwide affiliated group multiplied by
11 the ratio which the foreign assets of the
12 worldwide affiliated group bears to all the
13 assets of the worldwide affiliated group,
14 over

15 “(ii) the interest expense of all foreign
16 corporations which are members of the
17 worldwide affiliated group to the extent
18 such interest expense of such foreign cor-
19 porations would have been allocated and
20 apportioned to foreign source income if
21 this subsection were applied to a group
22 consisting of all the foreign corporations in
23 such worldwide affiliated group.

24 “(C) WORLDWIDE AFFILIATED GROUP.—
25 For purposes of this paragraph, the term

1 ‘worldwide affiliated group’ means a group con-
2 sisting of—

3 “(i) the includible members of an af-
4 filiated group (as defined in section
5 1504(a), determined without regard to
6 paragraphs (2) and (4) of section
7 1504(b)), and

8 “(ii) all controlled foreign corpora-
9 tions in which such members in the aggre-
10 gate meet the ownership requirements of
11 section 1504(a)(2) either directly or indi-
12 rectly through applying paragraph (2) of
13 section 958(a) or through applying rules
14 similar to the rules of such paragraph to
15 stock owned directly or indirectly by do-
16 mestic partnerships, trusts, or estates.

17 “(2) ALLOCATION AND APPORTIONMENT OF
18 OTHER EXPENSES.—Expenses other than interest
19 which are not directly allocable or apportioned to
20 any specific income producing activity shall be allo-
21 cated and apportioned as if all members of the affili-
22 ated group were a single corporation. For purposes
23 of the preceding sentence, the term ‘affiliated group’
24 has the meaning given such term by section 1504

1 (determined without regard to paragraph (4) of sec-
2 tion 1504(b)).

3 “(3) TREATMENT OF TAX-EXEMPT ASSETS;
4 BASIS OF STOCK IN NONAFFILIATED 10-PERCENT
5 OWNED CORPORATIONS.—The rules of paragraphs
6 (3) and (4) of subsection (e) shall apply for purposes
7 of this subsection; except that paragraph (4) shall be
8 applied on worldwide affiliated group basis.

9 “(4) TREATMENT OF CERTAIN FINANCIAL IN-
10 STITUTIONS.—

11 “(A) IN GENERAL.—For purposes of para-
12 graph (1), any corporation described in sub-
13 paragraph (B) shall be treated as an includible
14 corporation for purposes of section 1504 only
15 for purposes of applying this subsection sepa-
16 rately to corporations so described.

17 “(B) DESCRIPTION.—A corporation is de-
18 scribed in this subparagraph if—

19 “(i) such corporation is a financial in-
20 stitution described in section 581 or 591,

21 “(ii) the business of such financial in-
22 stitution is predominantly with persons
23 other than related persons (within the
24 meaning of subsection (d)(4)) or their cus-
25 tomers, and

1 “(iii) such financial institution is re-
2 quired by State or Federal law to be oper-
3 ated separately from any other entity
4 which is not such an institution.

5 “(C) TREATMENT OF BANK AND FINAN-
6 CIAL HOLDING COMPANIES.—To the extent pro-
7 vided in regulations—

8 “(i) a bank holding company (within
9 the meaning of section 2(a) of the Bank
10 Holding Company Act of 1956),

11 “(ii) a financial holding company
12 (within the meaning of section 2(p) of the
13 Bank Holding Company Act of 1956), and

14 “(iii) any subsidiary of a financial in-
15 stitution described in section 581 or 591,
16 or of any such bank or financial holding
17 company, if such subsidiary is predomi-
18 nantly engaged (directly or indirectly) in
19 the active conduct of a banking, financing,
20 or similar business,

21 shall be treated as a corporation described in
22 subparagraph (B).

23 “(5) ELECTION TO EXPAND FINANCIAL INSTI-
24 TUTION GROUP OF WORLDWIDE GROUP.—

1 “(A) IN GENERAL.—If a worldwide affili-
2 ated group elects the application of this sub-
3 section, all financial corporations which—

4 “(i) are members of such worldwide
5 affiliated group, but

6 “(ii) are not corporations described in
7 paragraph (4)(B),

8 shall be treated as described in paragraph
9 (4)(B) for purposes of applying paragraph
10 (4)(A). This subsection (other than this para-
11 graph) shall apply to any such group in the
12 same manner as this subsection (other than this
13 paragraph) applies to the pre-election worldwide
14 affiliated group of which such group is a part.

15 “(B) FINANCIAL CORPORATION.—For pur-
16 poses of this paragraph, the term ‘financial cor-
17 poration’ means any corporation if at least 80
18 percent of its gross income is income described
19 in section 904(d)(2)(D)(ii) and the regulations
20 thereunder which is derived from transactions
21 with persons who are not related (within the
22 meaning of section 267(b) or 707(b)(1)) to the
23 corporation. For purposes of the preceding sen-
24 tence, there shall be disregarded any item of in-
25 come or gain from a transaction or series of

1 transactions a principal purpose of which is the
2 qualification of any corporation as a financial
3 corporation.

4 “(C) ANTIABUSE RULES.—In the case of a
5 corporation which is a member of an electing fi-
6 nancial institution group, to the extent that
7 such corporation—

8 “(i) distributes dividends or makes
9 other distributions with respect to its stock
10 after the date of the enactment of this
11 paragraph to any member of the pre-elec-
12 tion worldwide affiliated group (other than
13 to a member of the electing financial insti-
14 tution group) in excess of the greater of—

15 “(I) its average annual dividend
16 (expressed as a percentage of current
17 earnings and profits) during the 5-
18 taxable-year period ending with the
19 taxable year preceding the taxable
20 year, or

21 “(II) 25 percent of its average
22 annual earnings and profits for such
23 5-taxable-year period, or

24 “(ii) deals with any person in any
25 manner not clearly reflecting the income of

1 the corporation (as determined under prin-
2 ciples similar to the principles of section
3 482),

4 an amount of indebtedness of the electing fi-
5 nancial institution group equal to the excess
6 distribution or the understatement or overstate-
7 ment of income, as the case may be, shall be re-
8 characterized (for the taxable year and subse-
9 quent taxable years) for purposes of this para-
10 graph as indebtedness of the worldwide affili-
11 ated group (excluding the electing financial in-
12 stitution group). If a corporation has not been
13 in existence for 5 taxable years, this subpara-
14 graph shall be applied with respect to the pe-
15 riod it was in existence.

16 “(D) ELECTION.—An election under this
17 paragraph with respect to any financial institu-
18 tion group may be made only by the common
19 parent of the pre-election worldwide affiliated
20 group and may be made only for the first tax-
21 able year beginning after December 31, 2009,
22 in which such affiliated group includes 1 or
23 more financial corporations. Such an election,
24 once made, shall apply to all financial corpora-
25 tions which are members of the electing finan-

1 cial institution group for such taxable year and
2 all subsequent years unless revoked with the
3 consent of the Secretary.

4 “(E) DEFINITIONS RELATING TO
5 GROUPS.—For purposes of this paragraph—

6 “(i) PRE-ELECTION WORLDWIDE AF-
7 FILATED GROUP.—The term ‘pre-election
8 worldwide affiliated group’ means, with re-
9 spect to a corporation, the worldwide affili-
10 ated group of which such corporation
11 would (but for an election under this para-
12 graph) be a member for purposes of apply-
13 ing paragraph (1).

14 “(ii) ELECTING FINANCIAL INSTITU-
15 TION GROUP.—The term ‘electing financial
16 institution group’ means the group of cor-
17 porations to which this subsection applies
18 separately by reason of the application of
19 paragraph (4)(A) and which includes fi-
20 nancial corporations by reason of an elec-
21 tion under subparagraph (A).

22 “(F) REGULATIONS.—The Secretary shall
23 prescribe such regulations as may be appro-
24 priate to carry out this subsection, including
25 regulations—

1 “(i) providing for the direct allocation
2 of interest expense in other circumstances
3 where such allocation would be appropriate
4 to carry out the purposes of this sub-
5 section,

6 “(ii) preventing assets or interest ex-
7 pense from being taken into account more
8 than once, and

9 “(iii) dealing with changes in mem-
10 bers of any group (through acquisitions or
11 otherwise) treated under this paragraph as
12 an affiliated group for purposes of this
13 subsection.

14 “(6) ELECTION.—An election to have this sub-
15 section apply with respect to any worldwide affiliated
16 group may be made only by the common parent of
17 the domestic affiliated group referred to in para-
18 graph (1)(C) and may be made only for the first
19 taxable year beginning after December 31, 2009, in
20 which a worldwide affiliated group exists which in-
21 cludes such affiliated group and at least one foreign
22 corporation. Such an election, once made, shall apply
23 to such common parent and all other corporations
24 which are members of such worldwide affiliated

1 group for such taxable year and all subsequent years
2 unless revoked with the consent of the Secretary.”.

3 (b) EXPANSION OF REGULATORY AUTHORITY.—

4 Paragraph (7) of section 864(e) is amended—

5 (1) by inserting before the comma at the end of
6 subparagraph (B) “and in other circumstances
7 where such allocation would be appropriate to carry
8 out the purposes of this subsection”, and

9 (2) by striking “and” at the end of subpara-
10 graph (E), by redesignating subparagraph (F) as
11 subparagraph (G), and by inserting after subpara-
12 graph (E) the following new subparagraph:

13 “(F) preventing assets or interest expense
14 from being taken into account more than once,
15 and”.

16 (c) EFFECTIVE DATE.—The amendments made by
17 this section shall apply to taxable years beginning after
18 December 31, 2009.

19 **SEC. 206. DETERMINATION OF FOREIGN PERSONAL HOLD-**
20 **ING COMPANY INCOME WITH RESPECT TO**
21 **TRANSACTIONS IN COMMODITIES.**

22 (a) IN GENERAL.—Clauses (i) and (ii) of section
23 954(e)(1)(C) (relating to commodity transactions) are
24 amended to read as follows:

1 “(i) arise out of commodity hedging
2 transactions (as defined in paragraph
3 (6)(A)),

4 “(ii) are active business gains or
5 losses from the sale of commodities, but
6 only if substantially all of the controlled
7 foreign corporation’s commodities are
8 property described in paragraph (1), (2),
9 or (8) of section 1221(a), or”.

10 (b) DEFINITION AND SPECIAL RULES.—Subsection
11 (c) of section 954 is amended by adding after paragraph
12 (5) the following new paragraph:

13 “(6) DEFINITION AND SPECIAL RULES RELAT-
14 ING TO COMMODITY TRANSACTIONS.—

15 “(A) COMMODITY HEDGING TRANS-
16 ACTIONS.—For purposes of paragraph
17 (1)(C)(i), the term ‘commodity hedging trans-
18 action’ means any transaction with respect to a
19 commodity if such transaction—

20 “(i) is a hedging transaction as de-
21 fined in section 1221(b)(2), determined—

22 “(I) without regard to subpara-
23 graph (A)(ii) thereof,

24 “(II) by applying subparagraph
25 (A)(i) thereof by substituting ‘ordi-

1 nary property or property described in
 2 section 1231(b) for ‘ordinary prop-
 3 erty’, and

4 “(III) by substituting ‘controlled
 5 foreign corporation’ for ‘taxpayer’
 6 each place it appears, and

7 “(ii) is clearly identified as such in ac-
 8 cordance with section 1221(a)(7).

9 “(B) REGULATIONS.—The Secretary shall
 10 prescribe such regulations as are appropriate to
 11 carry out the purposes of paragraph (1)(C) in
 12 the case of transactions involving related par-
 13 ties.”

14 (c) EFFECTIVE DATE.—The amendments made by
 15 this section shall apply to transactions entered into after
 16 December 31, 2004.

17 **Subtitle B—International Tax**
 18 **Simplification**

19 **SEC. 211. REPEAL OF FOREIGN PERSONAL HOLDING COM-**
 20 **PANY RULES AND FOREIGN INVESTMENT**
 21 **COMPANY RULES.**

22 (a) GENERAL RULE.—The following provisions are
 23 hereby repealed:

24 (1) Part III of subchapter G of chapter 1 (re-
 25 lating to foreign personal holding companies).

1 (2) Section 1246 (relating to gain on foreign in-
2 vestment company stock).

3 (3) Section 1247 (relating to election by foreign
4 investment companies to distribute income cur-
5 rently).

6 (b) EXEMPTION OF FOREIGN CORPORATIONS FROM
7 PERSONAL HOLDING COMPANY RULES.—

8 (1) IN GENERAL.—Subsection (c) of section
9 542 (relating to exceptions) is amended—

10 (A) by striking paragraph (5) and insert-
11 ing the following:

12 “(5) a foreign corporation,”

13 (B) by striking paragraphs (7) and (10)
14 and by redesignating paragraphs (8) and (9) as
15 paragraphs (7) and (8), respectively,

16 (C) by inserting “and” at the end of para-
17 graph (7) (as so redesignated), and

18 (D) by striking “; and” at the end of para-
19 graph (8) (as so redesignated) and inserting a
20 period.

21 (2) TREATMENT OF INCOME FROM PERSONAL
22 SERVICE CONTRACTS.—Paragraph (1) of section
23 954(c) is amended by adding at the end the fol-
24 lowing new subparagraph:

25 “(I) PERSONAL SERVICE CONTRACTS.—

1 “(i) Amounts received under a con-
2 tract under which the corporation is to fur-
3 nish personal services if—

4 “(I) some person other than the
5 corporation has the right to designate
6 (by name or by description) the indi-
7 vidual who is to perform the services,
8 or

9 “(II) the individual who is to per-
10 form the services is designated (by
11 name or by description) in the con-
12 tract, and

13 “(ii) amounts received from the sale
14 or other disposition of such a contract.

15 This subparagraph shall apply with respect to
16 amounts received for services under a particular
17 contract only if at some time during the taxable
18 year 25 percent or more in value of the out-
19 standing stock of the corporation is owned, di-
20 rectly or indirectly, by or for the individual who
21 has performed, is to perform, or may be des-
22 ignated (by name or by description) as the one
23 to perform, such services.”

24 (c) CONFORMING AMENDMENTS.—

25 (1) Section 1(h) is amended—

1 (A) in paragraph (10), by inserting “and”
2 at the end of subparagraph (F), by striking
3 subparagraph (G), and by redesignating sub-
4 subparagraph (H) as subparagraph (G), and

5 (B) by striking “a foreign personal holding
6 company (as defined in section 552), a foreign
7 investment company (as defined in section
8 1246(b)), or” in paragraph (11)(C)(iii).

9 (2) Paragraph (2) of section 171(c) is amend-
10 ed—

11 (A) by striking “, or by a foreign personal
12 holding company, as defined in section 552”,
13 and

14 (B) by striking “, or foreign personal hold-
15 ing company”.

16 (3) Paragraph (2) of section 245(a) is amended
17 by striking “foreign personal holding company or”.

18 (4) Section 312 is amended by striking sub-
19 section (j).

20 (5) Subsection (m) of section 312 is amended
21 by striking “, a foreign investment company (within
22 the meaning of section 1246(b)), or a foreign per-
23 sonal holding company (within the meaning of sec-
24 tion 552)”.

1 (6) Subsection (e) of section 443 is amended by
2 striking paragraph (3) and by redesignating para-
3 graphs (4) and (5) as paragraphs (3) and (4), re-
4 spectively.

5 (7) Subparagraph (B) of section 465(e)(7) is
6 amended by adding “or” at the end of clause (i), by
7 striking clause (ii), and by redesignating clause (iii)
8 as clause (ii).

9 (8) Paragraph (1) of section 543(b) is amended
10 by inserting “and” at the end of subparagraph (A),
11 by striking “, and” at the end of subparagraph (B)
12 and inserting a period, and by striking subparagraph
13 (C).

14 (9) Paragraph (1) of section 562(b) is amended
15 by striking “or a foreign personal holding company
16 described in section 552”.

17 (10) Section 563 is amended—

18 (A) by striking subsection (e),

19 (B) by redesignating subsection (d) as sub-
20 section (e), and

21 (C) by striking “subsection (a), (b), or (c)”
22 in subsection (e) (as so redesignated) and in-
23 serting “subsection (a) or (b)”.

24 (11) Subsection (d) of section 751 is amended
25 by adding “and” at the end of paragraph (2), by

1 striking paragraph (3), by redesignating paragraph
2 (4) as paragraph (3), and by striking “paragraph
3 (1), (2), or (3)” in paragraph (3) (as so redesign-
4 dated) and inserting “paragraph (1) or (2)”.

5 (12) Paragraph (2) of section 864(d) is amend-
6 ed by striking subparagraph (A) and by redesign-
7 ating subparagraphs (B) and (C) as subparagraphs
8 (A) and (B), respectively.

9 (13)(A) Subparagraph (A) of section 898(b)(1)
10 is amended to read as follows:

11 “(A) which is treated as a controlled for-
12 eign corporation for any purpose under subpart
13 F of part III of this subchapter, and”.

14 (B) Subparagraph (B) of section 898(b)(2) is
15 amended by striking “and sections 551(f) and 554,
16 whichever are applicable,”.

17 (C) Paragraph (3) of section 898(b) is amended
18 to read as follows:

19 “(3) UNITED STATES SHAREHOLDER.—The
20 term ‘United States shareholder’ has the meaning
21 given to such term by section 951(b), except that, in
22 the case of a foreign corporation having related per-
23 son insurance income (as defined in section
24 953(c)(2)), the Secretary may treat any person as a
25 United States shareholder for purposes of this sec-

1 tion if such person is treated as a United States
2 shareholder under section 953(c)(1).”

3 (D) Subsection (c) of section 898 is amended to
4 read as follows:

5 “(c) DETERMINATION OF REQUIRED YEAR.—

6 “(1) IN GENERAL.—The required year is—

7 “(A) the majority U.S. shareholder year,

8 or

9 “(B) if there is no majority U.S. share-
10 holder year, the taxable year prescribed under
11 regulations.

12 “(2) 1-MONTH DEFERRAL ALLOWED.—A speci-
13 fied foreign corporation may elect, in lieu of the tax-
14 able year under paragraph (1)(A), a taxable year be-
15 ginning 1 month earlier than the majority U.S.
16 shareholder year.

17 “(3) MAJORITY U.S. SHAREHOLDER YEAR.—

18 “(A) IN GENERAL.—For purposes of this
19 subsection, the term ‘majority U.S. shareholder
20 year’ means the taxable year (if any) which, on
21 each testing day, constituted the taxable year
22 of—

23 “(i) each United States shareholder
24 described in subsection (b)(2)(A), and

1 “(ii) each United States shareholder
 2 not described in clause (i) whose stock was
 3 treated as owned under subsection
 4 (b)(2)(B) by any shareholder described in
 5 such clause.

6 “(B) TESTING DAY.—The testing days
 7 shall be—

8 “(i) the first day of the corporation’s
 9 taxable year (determined without regard to
 10 this section), or

11 “(ii) the days during such representa-
 12 tive period as the Secretary may pre-
 13 scribe.”

14 (14) Clause (ii) of section 904(d)(2)(A) is
 15 amended to read as follows:

16 “(ii) CERTAIN AMOUNTS INCLUDED.—
 17 Except as provided in clause (iii), the term
 18 ‘passive income’ includes, except as pro-
 19 vided in subparagraph (E)(iii) or para-
 20 graph (3)(I), any amount includible in
 21 gross income under section 1293 (relating
 22 to certain passive foreign investment com-
 23 panies).”

24 (15)(A) Subparagraph (A) of section 904(g)(1),
 25 as redesignated by section 204, is amended by add-

1 ing “or” at the end of clause (i), by striking clause
2 (ii), and by redesignating clause (iii) as clause (ii).

3 (B) The paragraph heading of paragraph (2) of
4 section 904(g), as so redesignated, is amended by
5 striking “FOREIGN PERSONAL HOLDING OR”.

6 (16) Section 951 is amended by striking sub-
7 sections (c) and (d) and by redesignating subsections
8 (e) and (f) as subsections (e) and (d), respectively.

9 (17) Paragraph (3) of section 989(b) is amend-
10 ed by striking “, 551(a),”.

11 (18) Paragraph (5) of section 1014(b) is
12 amended by inserting “and before January 1,
13 2005,” after “August 26, 1937,”.

14 (19) Subsection (a) of section 1016 is amended
15 by striking paragraph (13).

16 (20)(A) Paragraph (3) of section 1212(a) is
17 amended to read as follows:

18 “(3) SPECIAL RULES ON CARRYBACKS.—A net
19 capital loss of a corporation shall not be carried
20 back under paragraph (1)(A) to a taxable year—

21 “(A) for which it is a regulated investment
22 company (as defined in section 851), or

23 “(B) for which it is a real estate invest-
24 ment trust (as defined in section 856).”

1 (B) The amendment made by subparagraph (A)
2 shall apply to taxable years beginning after Decem-
3 ber 31, 2004.

4 (21) Section 1223 is amended by striking para-
5 graph (10) and by redesignating the following para-
6 graphs accordingly.

7 (22) Subsection (d) of section 1248 is amended
8 by striking paragraph (5) and by redesignating
9 paragraphs (6) and (7) as paragraphs (5) and (6),
10 respectively.

11 (23) Paragraph (2) of section 1260(c) is
12 amended by striking subparagraphs (H) and (I) and
13 by redesignating subparagraph (J) as subparagraph
14 (H).

15 (24)(A) Subparagraph (F) of section
16 1291(b)(3) is amended by striking “551(d), 959(a),”
17 and inserting “959(a)”.

18 (B) Subsection (e) of section 1291 is amended
19 by inserting “(as in effect on the day before the date
20 of the enactment of the Jumpstart Our Business
21 Strength (JOBS) Act)” after “section 1246”.

22 (25) Paragraph (2) of section 1294(a) is
23 amended to read as follows:

24 “(2) ELECTION NOT PERMITTED WHERE
25 AMOUNTS OTHERWISE INCLUDIBLE UNDER SECTION

1 951.—The taxpayer may not make an election under
2 paragraph (1) with respect to the undistributed
3 PFIC earnings tax liability attributable to a quali-
4 fied electing fund for the taxable year if any amount
5 is includible in the gross income of the taxpayer
6 under section 951 with respect to such fund for such
7 taxable year.”

8 (26) Section 6035 is hereby repealed.

9 (27) Subparagraph (D) of section 6103(e)(1) is
10 amended by striking clause (iv) and redesignating
11 clauses (v) and (vi) as clauses (iv) and (v), respec-
12 tively.

13 (28) Subparagraph (B) of section 6501(e)(1) is
14 amended to read as follows:

15 “(B) CONSTRUCTIVE DIVIDENDS.—If the
16 taxpayer omits from gross income an amount
17 properly includible therein under section
18 951(a), the tax may be assessed, or a pro-
19 ceeding in court for the collection of such tax
20 may be done without assessing, at any time
21 within 6 years after the return was filed.”

22 (29) Subsection (a) of section 6679 is amend-
23 ed—

1 (A) by striking “6035, 6046, and 6046A”
2 in paragraph (1) and inserting “6046 and
3 6046A”, and

4 (B) by striking paragraph (3).

5 (30) Sections 170(f)(10)(A), 508(d), 4947, and
6 4948(c)(4) are each amended by striking
7 “556(b)(2),” each place it appears.

8 (31) The table of parts for subchapter G of
9 chapter 1 is amended by striking the item relating
10 to part III.

11 (32) The table of sections for part IV of sub-
12 chapter P of chapter 1 is amended by striking the
13 items relating to sections 1246 and 1247.

14 (33) The table of sections for subpart A of part
15 III of subchapter A of chapter 61 is amended by
16 striking the item relating to section 6035.

17 (d) EFFECTIVE DATE.—The amendments made by
18 this section shall apply to taxable years of foreign corpora-
19 tions beginning after December 31, 2004, and taxable
20 years of United States shareholders of such corporations
21 ending with or within such taxable years of such corpora-
22 tions.

1 **SEC. 212. EXPANSION OF DE MINIMIS RULE UNDER SUB-**
2 **PART F.**

3 (a) IN GENERAL.—Clause (ii) of section
4 954(b)(3)(A) (relating to de minimis, etc., rules) is
5 amended by striking “\$1,000,000” and inserting
6 “\$5,000,000”.

7 (b) TECHNICAL AMENDMENTS.—

8 (1) Clause (ii) of section 864(d)(5)(A) is
9 amended by striking “\$1,000,000” and inserting
10 “\$5,000,000”.

11 (2) Clause (i) of section 881(c)(5)(A) is amend-
12 ed by striking “\$1,000,000” and inserting
13 “\$5,000,000”.

14 (c) EFFECTIVE DATE.—The amendments made by
15 this section shall apply to taxable years of foreign corpora-
16 tions beginning after December 31, 2004, and taxable
17 years of United States shareholders of such corporations
18 ending with or within such taxable years of such corpora-
19 tions.

20 **SEC. 213. ATTRIBUTION OF STOCK OWNERSHIP THROUGH**
21 **PARTNERSHIPS TO APPLY IN DETERMINING**
22 **SECTION 902 AND 960 CREDITS.**

23 (a) IN GENERAL.—Subsection (c) of section 902 is
24 amended by redesignating paragraph (7) as paragraph (8)
25 and by inserting after paragraph (6) the following new
26 paragraph:

1 “(7) CONSTRUCTIVE OWNERSHIP THROUGH
2 PARTNERSHIPS.—Stock owned, directly or indirectly,
3 by or for a partnership shall be considered as being
4 owned proportionately by its partners. Stock consid-
5 ered to be owned by a person by reason of the pre-
6 ceding sentence shall, for purposes of applying such
7 sentence, be treated as actually owned by such per-
8 son. The Secretary may prescribe such regulations
9 as may be necessary to carry out the purposes of
10 this paragraph, including rules to account for special
11 partnership allocations of dividends, credits, and
12 other incidents of ownership of stock in determining
13 proportionate ownership.”

14 (b) CLARIFICATION OF COMPARABLE ATTRIBUTION
15 UNDER SECTION 901(b)(5).—Paragraph (5) of section
16 901(b) is amended by striking “any individual” and in-
17 serting “any person”.

18 (c) EFFECTIVE DATE.—The amendments made by
19 this section shall apply to taxes of foreign corporations
20 for taxable years of such corporations beginning after the
21 date of the enactment of this Act.

1 **SEC. 214. APPLICATION OF UNIFORM CAPITALIZATION**
2 **RULES TO FOREIGN PERSONS.**

3 (a) **IN GENERAL.**—Section 263A(c) (relating to ex-
4 ceptions) is amended by adding at the end the following
5 new paragraph:

6 “(7) **FOREIGN PERSONS.**—Except for purposes
7 of applying sections 871(b)(1) and 882(a)(1), this
8 section shall not apply to any taxpayer who is not
9 a United States person if such taxpayer capitalizes
10 costs of produced property or property acquired for
11 resale by applying the method used to ascertain the
12 income, profit, or loss for purposes of reports or
13 statements to shareholders, partners, other propri-
14 etors, or beneficiaries, or for credit purposes.”

15 (b) **EFFECTIVE DATE.**—

16 (1) **IN GENERAL.**—The amendment made by
17 subsection (a) shall apply to taxable years beginning
18 after December 31, 2004.

19 (2) **CHANGE IN METHOD OF ACCOUNTING.**—In
20 the case of any taxpayer required by the amendment
21 made by this section to change its method of ac-
22 counting for its first taxable year beginning after
23 December 31, 2004—

24 (A) such change shall be treated as initi-
25 ated by the taxpayer,

1 (B) such change shall be treated as made
2 with the consent of the Secretary of the Treas-
3 ury, and

4 (C) the net amount of the adjustments re-
5 quired to be taken into account by the taxpayer
6 under section 481 of the Internal Revenue Code
7 of 1986 shall be taken into account in such first
8 year.

9 **SEC. 215. REPEAL OF WITHHOLDING TAX ON DIVIDENDS**
10 **FROM CERTAIN FOREIGN CORPORATIONS.**

11 (a) IN GENERAL.—Paragraph (2) of section 871(i)
12 (relating to tax not to apply to certain interest and divi-
13 dends) is amended by adding at the end the following new
14 subparagraph:

15 “(D) Dividends paid by a foreign corpora-
16 tion which are treated under section
17 861(a)(2)(B) as income from sources within the
18 United States.”.

19 (b) EFFECTIVE DATE.—The amendment made by
20 this section shall apply to payments made after December
21 31, 2004.

1 **SEC. 216. REPEAL OF SPECIAL CAPITAL GAINS TAX ON**
2 **ALIENS PRESENT IN THE UNITED STATES**
3 **FOR 183 DAYS OR MORE.**

4 (a) **IN GENERAL.**—Subsection (a) of section 871 is
5 amended by striking paragraph (2) and by redesignating
6 paragraph (3) as paragraph (2).

7 (b) **EFFECTIVE DATE.**—The amendment made by
8 this section shall apply to taxable years beginning after
9 December 31, 2003.

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